

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Scott Lane Wenger

93-04982

Name of Respondent

Thomas James & Associates, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 2, 1993, Claimant Scott Lane Wenger, who appeared Pro Se, alleged that Respondent Thomas James & Associates, Inc. failed to follow his instructions to sell his shares of Electronic Assembly Services stock after the stock doubled in value, and instead his broker used an additional \$1,760.00 that was to be returned to his retirement account to purchase additional shares of this stock. The Claimant contended that the second purchase of Electronic Assembly Services was not authorized, and further that had his instructions to sell the stock been followed, he would not have suffered damages which the Respondent caused him to suffer.

Respondent Thomas James & Associates, Inc., through its in-house counsel, Richard J. Milham, Jr., Rochester, NY, maintained that the Claimant has failed to file a timely claim and is barred by applicable statute of limitations, and further that the Claimant has failed to prove his claim by a preponderance of the evidence. The Respondent contended that the Claimant failed to mitigate his damages, and that any losses incurred by the Claimant were not due to wrongdoing on the part of the Respondent, and therefore all claims against it should be dismissed.

RELIEF REQUESTED

Claimant Scott Lane Wenger requested \$1,753.70 in actual damages, plus \$705.95 in interest.

Respondent Thomas James & Associates, Inc. requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James R. Kennedy, Jr., Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 30, 1993 and by the Respondent on January 26, 1994.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Scott Lane Wenger against Respondent Thomas James & Associates, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. Respondent Thomas James & Associates, Inc. is liable and shall pay \$25.00 to Claimant as reimbursement of one-half of the filing fee.

Affirmation

STATE OF

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COUNTY OF

I, JAMES R. KENNEDY, Jr., do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: March 24, 1995